

STATE OF CALIFORNIA

AGRICULTURAL LABOR RELATIONS BOARD

HERITAGE FARMS MUSHROOMS, INC.,)	
)	
Employer,)	Case No. 80-RC-86-SAL
)	
and)	
)	
UNITED FARM WORKERS)	8 ALRB No. 65
OF AMERICA, AFL-CIO,)	
)	
Petitioner.)	

DECISION AND CERTIFICATION OF REPRESENTATIVE

Following a Petition for Certification filed by the United Farm Workers of America, AFL-CIO (UFW), on October 17, 1980,^{1/} a representation election was conducted on October 24 among the agricultural employees of Heritage Farms Mushrooms, Inc. The official Tally of Ballots showed the following results:

UFW	31
No Union	10
Challenged Ballots	<u>9</u>
Total	50

The Employer timely filed post-election objections, the following two of which were set for hearing:

1. Whether the United Farm Workers of America, AFL-CIO (UFW), through its agents, representatives and supporters, used supervisors to coerce employees into signing the union authorization cards by informing them that if they did not sign the card they would lose their jobs, and, if so, whether such conduct affected the outcome of the election.

^{1/} Unless otherwise noted, all dates herein refer to 1980.

2. Whether the UFW, through its agents, representatives and supporters, coerced agricultural employees in the exercise of their rights by having supervisors solicit the employees to sign union authorization cards and threaten the employees with loss of employment if they failed to sign such cards; and, if so, whether such conduct affected the outcome of the election.

The hearing on objections was held on June 16, 17, 22, 23, 24, 25, and 30, 1981, before Investigative Hearing Examiner (IHE) Steven K. Nagano, who issued the attached proposed decision on December 24, 1981. The IHE found that Maribel Avila and Refugio Franco were supervisors within the meaning of Labor Code section 1140.4(j),^{2/} and even assuming that they made objectionable statements to employees, their conduct was in effect counterbalanced by the Employer's vigorous no-union pre-election campaign and its pre-election assurances to employees that no reprisals would be taken against them because of the way they voted. The IHE recommended that we overrule the Employer's objections and certify the UFW as the collective-bargaining representative of the Employer's agricultural employees.

The Employer timely filed exceptions to the IHE's Decision and a supporting brief. The UFW timely filed a brief in response to the Employer's exceptions.

Pursuant to the provisions of Labor Code section 1146, the Agricultural Labor Relations Board (ALRB or Board) has delegated its authority in this matter to a three-member panel.

The Board has considered the record and the attached

^{2/} All section references herein are to the California Labor Code unless otherwise stated.

IHE Decision in light of the exceptions and briefs of the parties^{3/} and has decided to affirm the IHE's rulings, findings, and conclusions,^{4/} and to adopt his recommendations. Accordingly, we hereby overrule the Employer's objections and we shall certify the UFW.

CERTIFICATION OF REPRESENTATIVE

It is hereby certified that a majority of the valid votes has been cast for the United Farm Workers of America, AFL-CIO, and that, pursuant to Labor Code section 1146, the said labor organization is the exclusive representative of all the agricultural employees of Heritage Farms Mushrooms, Inc., in the State of California for the purpose of collective bargaining, as defined in Labor Code section 1155.2(a), concerning employees' wages, working hours, and other terms and conditions of employment.

Dated: September 23, 1982

HERBERT A. PERRY, Acting Chairman

ALFRED H. SONG, Member

JEROME R. WALDIE, Member

^{3/} The UFW asserts that the Employer, in relying on the conduct of its own supervisors in attempting to set this election aside, transgresses 8 California Administrative Code section 20365 (d). We note that the actions of supervisors are not automatically attributable to the employer where, as in this case, such actions are explicitly disavowed by the employer prior to the election and where the employer's vigorous no-union pre-election campaign makes it unlikely for employees to believe that the pro-union supervisors speak on behalf of the employer. (Stevenson Equipment Company (1969) 174 NLRB 865 [70 LRRM 1302]. See also Vista Verde v. ALRB (1981) 29 Cal.3d 307 [172 Cal.Rptr. 720]; Superior Farming Company, Inc. (Nov. 6, 1981) 7 ALRB No. 39.)

^{4/} In reaching our decision, we place no reliance on Turner's Express, Inc. (1971) 189 NLRB 106 [76 LRRM 1562], cited by the IHE. (See Stevenson Equipment Company, supra, 174 NLRB 865.)

CASE SUMMARY

Heritage Farms Mushrooms, Inc.

8 ALRB No. 65

Case No. 80-RC-86-SAL

THE DECISION

Following a representative election in which the United Farm Workers of America, AFL-CIO (UFW) received a majority of the votes, the Employer timely filed post-election objections alleging that two of its pro-UFW supervisors solicited employees to sign UFW authorization cards and threatened employees with loss of employment if they refused to sign the cards. The Investigative Hearing Examiner (IHE) recommended overruling the objections. He found that one such incident of improper campaigning did take place, but that even if the alleged activities had occurred, the conduct of the supervisors did not warrant setting aside the election as the Employer specifically disavowed their statements as to the affected employees and gave those workers pre-election assurance of freedom from retaliation.

BOARD DECISION

The Board affirmed the IHE's rulings, findings, and conclusions, overruled the Employer's objections and certified the UFW as the exclusive collective bargaining representative of the Employer's agricultural employees. The Board noted that actions or statements of supervisors are not automatically attributable to the Employer where such conduct has been explicitly disavowed by the Employer prior to the election and where the Employer's vigorous no-union pre-election campaign makes it unlikely for employees to believe that pro-union supervisors speak on behalf of management.

* * *

This Case Summary is furnished for information only and is not an official statement of the case, or of the ALRB.

* * *

STATE OF CALIFORNIA
AGRICULTURAL LABOR RELATIONS BOARD

In the Matter of:

HERITAGE MUSHROOM FARMS, INC., Case No. 80-RC-86-SAL

Employer,

and

UNITED FARM WORKERS OF
AMERICA, AFL-CIO,

Petitioner.

Floyd J. Palmer of Littler,
Mendelson, Fastiff & Tichy
for the Employer.

Francis E. Fernandez
for the Petitioner.

DECISION

STATEMENT OF THE CASE

STEVEN K. NAGANO, Investigative Hearing Examiner: this case was heard by me on June 16, 17, 22, 23, 24, 25, and 30, 1981, in Gilroy, California.

On October 22, 1980, the United Farm Workers of America, AFL-CIO (UFW) filed a petition for certification as collective bargaining representative of the agricultural employees of Heritage Farms Mushrooms, Inc. (Employer) in San Martin and all other California locations. On October 24, 1980, the Salinas Regional Director conducted an election at the

Employer's plant. The tally of ballots revealed the following results:

UFW	31
No Union	10
Unresolved Challenged Ballots	9
Total Number of Ballots	50

The Employer filed timely objections to the election and the following issues were set for hearing:

1. Whether the United Farm Workers of America, APL-CIO, (UFW) , through its agents, representatives and supporters, used supervisors to coerce employees into signing the union authorization cards by informing them that if they did not sign the card they would lose their jobs, and, if so, whether such conduct affected the outcome of the election.

2. Whether the UFW, through its agents, representatives and supporters, coerced agricultural employees in the exercise of their rights by having supervisors solicit the employees to sign union authorization cards and threaten the employees with loss of employment if they failed to sign such cards; and, if so, whether such conduct affected the outcome of the election.

All parties were represented at the hearing and were given full opportunity to participate in the proceedings.

Upon this entire record, including my observation of the demeanor of the witnesses, and after consideration of the arguments made by the parties, I make the following findings of fact and conclusions of law.

Jurisdiction

None of the parties challenged the Board's jurisdiction in this matter. Accordingly, I find the Employer is an agricultural employer within the meaning of Labor Code section 1140.4Xc) and the UFW is a labor organization within the meaning of Labor Code section 1140.4(f).

Background

The Employer produces and sells mushrooms. It is owned and managed by Donald Baker, John Wimer and Louis DiCecco.

As General Manager, Don Baker's duties include office administration, personnel and sales. Louis DiCecco is in charge of the Employer's financial matters. John Wimer is responsible for the growing of the mushrooms. Wimer spends most of his time in the growing areas, and he is assisted by Jim Goetz.

The operation of the Employer is divided functionally into two parts: the picking houses, large sheds where the mushrooms are grown, and the packing room, where the mushrooms are processed and packaged. During the pertinent pre-election period, Salvador Avila was the supervisor for the picking houses. Refugio Franco also worked in the picking houses. As one of those who allegedly threatened employees, Franco's status as a supervisor under the Act is at issue in this matter. In June, 1980, Maribel Avila was promoted to the position of packing room supervisor, according to Don Baker. As Maribel Avila is alleged to have threatened employees, her supervisory status is also at issue.

Don Baker testified that, as packing room supervisor, Maribel Avila was responsible for scheduling the work time and duties of the eight packing house employees, and filling orders from customers and hiring and disciplining the employees. Maribel acknowledged receiving at the time of her promotion, Employer Exhibit 1 with the exception of items 16, 17, and 18 of the exhibit. Employer Exhibit 1 is entitled "Packing Room Supervisor Duties" and describes various supervisory functions.

To a large extent, 'the tasks in the packing room were routine. Employees assembled the boxes, weighed the mushrooms, packed the mushrooms, transported mushrooms to and from the cooler and cleaned the Packing Room. All the approximately eight packing room employees performed the various tasks.

The work day in the packing room would begin with Maribel going to the office, adjacent to the packing room, and receiving from Don Baker or one of the secretaries the customer orders for the day. After receiving the orders from the office, Maribel would direct the other employees to begin the various tasks. Periodically, during the day Don Baker or Ken Coda would provide orders or make impromptu inspections of the mushroom pack. Maribel would also check the work of the employees. If she found an employee's work inadequate, she would so inform the employee.

There was testimony that when an employee was late for work, Maribel would confront the employee, ask the reason for the tardiness, and inform Don Baker about the problem.

Occasionally, Maribel had difficulties with employees who refused to do as she directed. Prior to the election, Maribel asked Don Baker to tell the workers that they were to obey her orders.

Refugio Franco began working for the Employer in 1978. During the pre-election period, Franco spent a large measure of his working day transporting stacks of mushrooms from the picking houses to the cooler on a hand dolly. Each trip would take two to five minutes, and on an average day he would make fifteen trips, transporting 100 pounds of mushrooms at a time. Franco would also help Ramiro Parra sweep the houses.

Don Baker testified that Franco had the authority to schedule workers, monitor the work of the pickers, recommend people for hiring and to discipline and discharge workers. There was testimony that Franco sometimes told employees that their work was of inferior quality.

A few times each week Salvador Avila would be absent from his duties as supervisor either because he had a day off or because of other duties. During Avila's absences, Franco recorded the amount of mushrooms picked by each worker. In addition, Franco would communicate management's instructions to the pickers in the absence of Avila.

Salvador Avila informed the employees that, in his absence, they were to follow Franco's instructions. Once, upon Franco's request, Ken Koda informed one employee that he was to follow Franco's orders.

On one occasion when Avila was absent, during January of

1980, Franco instructed picker Juan Galindo to repick a tray of mushrooms. Galindo refused. When Franco told Galindo that he must follow his orders, Galindo struck Franco in the chest. Franco reported the incident to Don Baker. Baker testified that Franco came to him asking for Galindo's check as he was firing Galindo. Baker further testified that he told Franco he could not have a check written as the necessary office personnel were not present that day but that he should have directed Galindo to leave the premises.

Franco's testimony differed from that of Baker's. Essentially, Franco testified that he merely reported the incident to Baker and left the matter in the hands of management. Juan Covarrubios, who translated for Baker and Franco when the latter reported the incident, testified that neither Baker or Franco actually fired Galindo. Galindo continued working after he struck Franco, and he was not fired until the next day when Avila returned to work. A memorandum from Galindo's personnel file, dated January 15, 1980, indicates that Galindo was terminated for having "struck his supervisor in the chest." Employer Exhibit 3.

Alleged Threats

Packing room worker Salvador Correa testified that he originally signed a UFW authorization card voluntarily. Correa further testified that a few days later, while in the packing room, Maribel Avila asked him to sign another authorization card. According to Correa, when he refused to sign the card, Maribel said, "If you don't sign it, you'd better look for another job."

Correa testified that the above incident occurred during the pre-election period. Maribel Avila testified that she did not ask Correa to sign a second authorization card and that she did not threaten him.

Picker Eriberto Gonzalez testified that before the election Refugio Franco came to his home to discuss the UFW. Franco came to his home in the afternoon and asked him to sign an authorization card. When Gonzalez refused to sign the card, Franco said, "If you don't sign it, it is possible you'll be taken out of here once the union comes in." At work, again prior to the election, Franco said to Gonzalez, "You didn't want to sign, but you're going to be fired once the union comes in."

Both Salvador Correa and Eriberto Gonzalez reported the alleged threats to management. Gonzalez reported the incidents to Ken Koda and Salvador Avila. They informed Gonzalez that he would not be fired because of his position regarding the union and that he was free to vote as he chose. Correa, after reporting the alleged threat to management, was also assured that he was free from any reprisal. Both Correa and Gonzalez made declarations indicating that they had been threatened. The declarations are dated October 20, 1980.

During the pre-election period, the Employer engaged in a vigorous anti-union campaign. The employer hired a labor consultant who assisted management in its attempt to dissuade the employees from voting, for the union. The campaign consisted of group and individual meetings with the employees and distribution of leaflets. Basically, the position of the Employer

was that it did not want the employees to vote for the UFW. The Employer also informed the employees that they were free to vote either for or against the UFW and that there would be no reprisals irrespective of their votes.

Analysis

The threshold question in this matter is whether Maribel Avila and Refugio Franco are supervisors. Labor Code section 1140.4(j) defines supervisor,

"[t]he term 'supervisor' means any individual having the authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote discharge, assign, reward or discipline other employees, or the responsibility to direct them, or to adjust their grievances, or effectively to recommend such action, if, in connection with the foregoing, the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment."

The testimony establishes that Maribel Avila assigned employees to their tasks, informed them when their performance was inadequate, reprimanded them when they were tardy and adjusted the employees' schedules. The UFW argues that Maribel acted as a conduit for management and did not exercise any independent judgment, the sine qua non for supervisory status. Mid-State Horticulture Co. (December 19, 1978) 4 ALRB No. 101. However, the record reveals that in performing the above-mentioned functions, Avila did more than act as a conduit for

management. Indeed, Maribel determined on her own where employees were to work and when their performance needed improvement. I therefore conclude that Maribel Avila is a supervisor within the meaning of-- Labor Code section 1140.4 (j).

The Employer informed the employees that they were to obey the orders of Refugio Franco. This, in itself, indicates that he had the authority to direct the employees. During the absences of Salvador Avila, Franco had the authority normally possessed by supervisor Avila.

The UFW argues that Franco's occasional exercise of authority on behalf of Avila would not qualify him as a supervisor, citing Anton Caratan and Sons (December 21, 1978) 4 ALRB No. 103. However, the record established that Avila was absent regularly every week. Thus, Franco's actions as supervisor were not occasional, isolated incidents as in Anton Caratan and Sons (supra). I therefore conclude that Refugio Franco is a supervisor within the meaning of Labor Code section 1140.4(j) .

The National Labor Relations Board has held that the mere participation of a supervisor in a union's organizing campaign, without a showing of possible objectionable effects, does not warrant setting aside an election. Admiral Petroleum Corporation (1979) 240 NLRB 894, 100 LRRM 1373. In that case, the Board stated,

"The leading case, Stevenson Equipment Company (1969) 174 NLRB 865, 70 LRRM 1302, set forward

two areas of inquiry relevant to a showing of such objectionable effects. The first is the degree to which employees may infer from the supervisory conduct that the employer favors the union...The second conceivable effect of such supervisory activity noted in Stevenson is 'found in the implications of the continuing relationship between the supervisor and the employees'... namely, the possibility that such conduct could coerce an employee into supporting the union out of fear of future retaliation of a union-oriented supervisor."

Before analyzing the incidents of alleged threats, I first note that the testimony of Salvador Correa was incredible. He was an evasive, unresponsive, confused witness. Further, he testified that Maribel Avila threatened him for not signing a second authorization card - an inherently improbable incident. For these reasons, I find that Maribel Avila did not threaten Salvador Correa. However, the following will assume , for the sake of analysis, that the threat against Correa did occur along with the threat against Eriberto Gonzalez, which I find did occur.

Under the first "prong" of the Stevenson test, it is clear that the statements by supervisors Avila and Franco would have had no objectionable effect. As Don Baker readily testified, the Employer engaged in a vigorous anti-union campaign making certain its employees understood it was against

unionization. There would, have been no reasonable basis for the employees to infer that the Employer favored the UFW.

Under the second "prong" of the Stevenson test the statements by Avila and Franco would have had no objectionable effect. Both Avila and Franco were minor supervisors; it was apparent to employees that ultimate authority rested with top management, Don Baker and his co-owners. Thus, any coercive effect of the conduct of Avila and Franco would be minimal. Turner's Express, Inc.(1971) 189 NLRB 106, 76 LRRM 1562.

Any minimal coercive effect of the statements by Avila and Franco were negated by the pre-election assurances by the Employer that there would be no reprisals for the way an employee voted. In Stevenson (supra), the Board found that the coercive effects of a "renegade" supervisor's threat were negated by the employer's statements of its position against the union. The Employer's statements would indicate to the employees that they would be able to report to upper management any incidents of unfairness by the renegade supervisor because the employees voted against the union.

Any coercive effects of the statements by Avila and Franco were negated as Correa and Gonzalez did approach upper management before the election and reported the incidents. In turn, they were reassured that they could vote as they pleased without reprisal.^{1/}

^{1/} Testimony was elicited that Correa and- Gonzalez feared reprisal even after they were reassured by the Employer's upper management. However, I have disregarded such testimony. Such" testimony is inherently unreliable. See "The Regulation of

(footnote 1 continued on page 12)

I conclude that any possible coercive effect resulting from statements made by supervisors Avila and Franco were negated by the assurances of freedom of choice offered by the Employer and that the election was therefore a result of the free choice of the employees.

Recommendation

I recommend that the UFW be certified as the collective bargaining representative of agricultural employees of the Employer in the State of California.

DATED: December 24, 1981

Respectfully submitted,



STEVEN K. NAGANO
Investigative Hearing Examiner

(footnote 1 continued)

Campaign Tactics in Representation Election Under the National Labor Relations Act" by Derek C. Bok, Harvard Law Review, v. 78:38. Gonzalez' testimony provides an example of why such testimony is without merit. He testified that he was still fearful of being discharged at the time of the hearing even though Refugio Franco was no longer even working for the Employer,

State of California
AGRICULTURAL LABOR RELATIONS BOARD
Estado de California
CONSEJO DE RELACIONES DE TRABAJADORES AGRICOLAS

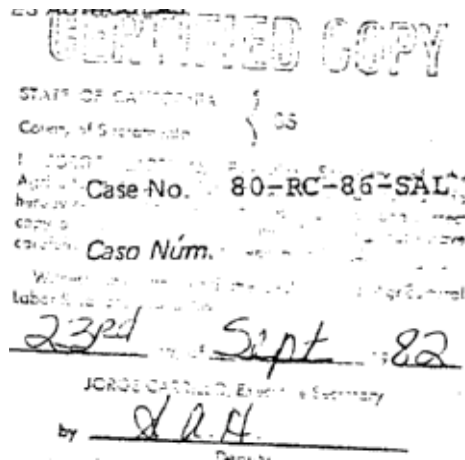
HERITAGE FARMS MUSHROOMS, INC.,

Employer,

and

UNITED FARM WORKERS
OF AMERICA, AFL-CIO,

Petitioner.



CERTIFICATION OF REPRESENTATIVE
CERTIFICACION DEL REPRESENTANTE

An election having been conducted in the above matter under the supervision of the Agricultural Labor Relations Board in accordance with the Rules and Regulations of the Board; and it appearing from the Tally of Ballots that a collective bargaining representative has been selected; and no petition filed pursuant to Section 1156.3(c) remaining outstanding;

Habiendose conducido una eleccion en el asunto arriba citado bajo la supervision del Consejo de Relaciones de Trabajadores Agricolas de acuerdo con las Reglas y Regulaciones del Consejo; y apareciendo por la Cuenta de Votos que se ha seleccionado un representante de negociacion colectiva; y que no se ha registrado (archivado) una peticion de acuerdo con la Section 1156.3(c) que queda pendiente;

Pursuant to the authority vested in the undersigned by the Agricultural Labor Relations Board, IT IS HEREBY CERTIFIED that a majority of the valid ballots have been cast for *De acuerdo con la autoridad establecida en el suscribiente por el Consejo de Relaciones de Trabajadores Agricolas. por LA PRESENTE SE CERTIFICA que la mayoria de las balotas validas han si do depositadas en favor de*

UNITED FARM WORKERS OF AMERICA, AFL-CIO

and that, pursuant to Section 1156 of the Agricultural Labor Relations Act, the said labor organization is the exclusive representative of all the employees in the unit set forth below, found to be appropriate for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, or other conditions of employment.

y que, de acuerdo con la Seccion 1156 del Acto de Relaciones de Trabajadores Agricolas, dicha organizacion de trabajadores es el represantante exclusive de todos las trabajadores en la unidad aqui implicada, y se ha determinado que es apropiada con el fin de llevar cabo negociacion colectiva con respecto al salario, las horas de trabajo, y otras condiciones de empleo.

UNIT: All the agricultural employees of the employer in the State of California.

UNIDAD:

Signed at Sacramento, California

On behalf of
AGRICULTURAL LABOR RELATIONS BOARD

On the 23rd day of September 1982

Firmando en _____

De parte del
CONSEJO DE RELACIONS DE TRABAJADORES AGRICOLAS

En el _____ dia de _____ 19

Jorge Carrillo